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**Summary record of the 35th meeting**
Held at Headquarters, New York, on Thursday, 5 November 1998, at 10 a.m.

*Chairman*: Mr. Hachani ..... (Tunisia)

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*The meeting was called to order at 10.15 a.m.*

**Agenda item 110: Human rights questions** (*continued*) (A/53/3, 58, 74, 75, A/53/77–S/1998/171, A/53/79, 80, A/53/94–S/1998/309, A/53/99–S/1998/344, A/53/131–S/1998/435, A/53/165–S/1998/601, A/53/167, 203, A/53/205–S/1998/711, A/53/214, 215, A/53/225–S/1998/747, A/53/343, 404, 425, 489, 493, 494, 497, 557, A/C.3/53/4, 5, 7, A/C.3/53/9, A/C.3/53/12)

**(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms** (*continued*) (A/53/72–S/1998/156, A/53/81–S/1998/225, A/53/82–S/1998/229, A/53/83–S/1998/230, A/53/86–S/1998/240, A/53/89–S/1998/250, A/53/93–S/1998/291, A/53/95–S/1998/311, A/53/98–S/1998/335, A/53/113–S/1998/345, A/53/115–S/1998/365, A/53/268, 279, 284, 293 and Add.1, 304, 309, 313, 324, 337, 400, 501, A/C.3/53/6, A/C.3/53/L.5)

**(c) Human rights situations and reports of special rapporteurs and representatives** (*continued*) (A/53/84–S/1998/234, A/53/114, 120, A/53/182–S/1998/669, A/53/188, 322, 355, 364, 365, 366, 367, 402, 423, 433, 490, 504, 530, 537, 539, 563, A/C.3/53/3 and 8)

**(e) Report of the United Nations High Commissioner for Human Rights** (*continued*) (A/53/36, Suppl. No. 36)

1. **Mr. Deng** (Special Representative of the Secretary-General on Internally Displaced Persons) said that since the establishment of his mandate in 1992, the international community had made appreciable progress in addressing the needs of the internally displaced populations worldwide. In response to requests from the Commission on Human Rights and the General Assembly, an appropriate normative framework had been developed, progress had been made towards instituting an effective inter-agency collaborative mechanism and missions had been conducted to the countries affected. A most significant achievement had been the elaboration, through a collaborative effort involving distinguished legal experts and representatives of United Nations and other organizations, of guiding principles for the prevention of arbitrary displacement, protection and assistance during displacement and solutions through safe return, resettlement and reintegration. Those principles, which were consistent with existing humanitarian law, were neither a draft declaration nor a binding instrument. Nevertheless, they had been welcomed not only by United Nations agencies, including the Office of the United Nations High Commissioner for Refugees, UNICEF, and the World Food Programme, but also by the broader international community, including the International Committee of the Red Cross. The Inter-Agency Standing Committee, accordingly, had adopted a decision encouraging its members to apply the guiding principles in their activities, and the Commission on Human Rights had taken note of the principles at its most recent session.

2. At the regional level, a rapporteur on internally displaced persons had been appointed by the Commission on Human Rights of the Organization of American States and had been advocating the dissemination and application of the guiding principles in the Americas. The participants in a workshop sponsored by the Organization of African Unity, the Office of the United Nations High Commissioner for Refugees and the Brookings Institution had endorsed the guiding principles as an important basis for more effectively addressing the problems of internal displacement in Africa and concluded that the principles should be made available throughout the continent. That meeting, whose conclusions and recommendations would be presented to the OAU Ministerial Meeting on Refugees, Returnees and Displaced Persons to be held in Khartoum in December, was the first in a series of regional conferences which the Special Representative planned to organize in collaboration with the Brookings Institution and other partners. The next conference, which would be held in the Americas, would take place in Colombia in January and would be sponsored by the United States Committee on Refugees. Others were planned for Europe and Asia. Their objective was to raise the level of awareness of the problem of internal displacement and of the guiding principles and explore the role that regional bodies could play in that field.

3. With respect to institutional arrangements, there were obvious gaps in the international system. The remedial option that was generally favoured was to set up a collaborative arrangement that would utilize existing capacities and enhance the effectiveness of the international system. Coordination, however, had to be effective. Within the framework of the United Nations reform, the Emergency Relief Coordinator had been given the responsibility of addressing the needs of internally displaced persons and was working in close cooperation with the Special Representative, the High Commissioner for Human Rights and other agencies in an effort to focus attention in order to more effectively protect and assist the internally displaced. Agreement had also been reached on the designation of focal

points on internally displaced persons within the agencies whose mandates and scope of activities were pertinent to internally displaced persons. That network of focal points would act in liaison with a senior adviser on internal displacement, who would have the task of implementing the mandate in the Office for the Coordination of Humanitarian Affairs. The Swiss Government had generously funded the secondment of an official from the International Committee of the Red Cross to fill that post.

4. Country missions remained the best means for assessing conditions on the ground and the effectiveness of international action. They provided the opportunity for dialogue with Governments and other concerned actors on ways to improve the situation. The preparation of the guiding principles and the improved arrangement for inter-agency collaboration should significantly enhance the value of country missions. Apart from the activities that were conducted within the United Nations system, the Special Representative had also been involved in the preparation of studies on internal displacement, the most significant of which was the comprehensive two-volume study: *Masses in Flight: The Global Crisis of Internal Displacement* and *The Forsaken People: Case Studies of the Internally Displaced*. The Special Representative's mandate had evolved into one of acting more affirmatively to help improve the situation of internally displaced populations. To that end, consultations had begun with various experts in order to evaluate the work done thus far and suggest ways in which it could be made more effective in providing protection and assistance to the internally displaced. With the support of the General Assembly, the Commission on Human Rights, other United Nations bodies and the international community at large, the implementation of that mandate could make a significant, if modest, contribution to addressing the plight of the internally displaced populations throughout the world.

5. **Mr. Strohal** (Austria) said that he welcomed the opportunity to have a dialogue with the Special Rapporteur not only because the problem of displaced persons constituted a serious world crisis, but also because the Special Rapporteur had made a considerable effort to become better acquainted with their situation, had clarified the responsibilities of the United Nations system in that field and had taken a major step by contributing to the adoption of the guiding principles for action by the Organization in the field. His delegation wondered what impact those achievements would have on the situation of internally displaced persons, the prospects with regard to the Special Rapporteur's mandate in view of the legal framework which he had helped set up, and the follow-up measures which countries and the international community could take in order to implement more effectively the mandate in the field. He also inquired whether the Special Rapporteur was satisfied with the dissemination of the guiding principles.

6. **Mr. Deng** (Special Representative of the Secretary-General on Internally Displaced Persons) said that the mandate entrusted to him had evolved to a point where conducting studies should give way to practical action in the field. The structures jointly established with the Office for the Coordination of Humanitarian Affairs and the High Commissioner for Human Rights would allow for monitoring of the evolution of the situation worldwide, the identification of crisis situations and the processing of the resulting data, the registration of potential sources of information, and rapid intervention. There was thus a need to strengthen the various bodies both at Headquarters and in the field with a view to ensuring that the data received was up to date. Resources must be made available to that end. With respect to monitoring, collaborative mechanisms were in place and should allow for on-site visits to evaluate the situation, once agreements with Governments had been concluded. As to the dissemination of the guiding principles, he welcomed the activities undertaken. The guiding principles had been published in booklet form and meetings had taken place at the regional level with non-governmental organizations with a view to increasing their participation in initiatives on the ground.

7. **Mr. Dienstbier** (Special Rapporteur of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia) said that the report under consideration had had to be prepared before the end of August and was therefore rather outdated. Although it had been updated, such an impractical method of work must be changed if there was a real willingness to reform the Organization and make it more effective. He had taken up his post only in July. He believed that his role was to be independent and to avoid being influenced by government policies or the particular focus of specialized international organizations, and basing himself solely on the feelings and special interests of the individuals affected. Instead, it was necessary to achieve a synthesis of the various approaches and views in order to arrive at a common strategy for the promotion of human rights in the region. Although 1998 had been marked by the events in Kosovo, the situation there was only the most visible manifestation of the lack of democracy, the fragility of the democratic process and the massive violations of human rights in all the countries of the region. While there had been some progress elsewhere, the real transformation of those post-war, post-communist societies without democratic traditions required determination and

cooperation from Governments, the emerging institutions of civil society and the international community.

8. The majority of refugees and internally displaced persons faced obstacles upon their return. While the programmes to facilitate the return of those persons in Croatia and Bosnia and Herzegovina were encouraging, the political willingness necessary for their implementation was lacking at every level. The main political parties were more concerned with strengthening their ethnic identity than with creating conditions conducive to the institution of the rule of law and the advent of a civil society founded on pluralism and tolerance. Neither Governments nor international organizations could assist so many refugees. If the conflict in Kosovo was not contained, the region would be faced with new waves of refugees, Albanians and Serbs, who might be easy targets for nationalist extremists. The implementation of return programmes was thus of vital importance. There was, however, a growing number of refugees who were not prepared to return to their countries. Programmes were therefore needed to help them settle wherever they were.

9. The threat of a large-scale tragedy in Kosovo had been averted for the time being. Most people had returned home despite the large number of houses which had been damaged or destroyed by Yugoslav armed units. However, the problem of Kosovo was far from over. Although the agreement concluded between Mr. Holbrooke and Mr. Milošević had meant that the worst had been avoided. Ambassador Christopher Hill was attempting to bring the Serbs and the Albanians to the table to negotiate a political settlement, but the end of the conflict was far ahead. OSCE and NATO were assuming responsibility for finding a solution, and it was to be hoped that the winter, which prevented military activity, would allow time to formulate and coordinate the strategy of the international institutions, including the United Nations.

10. Since television was the main source of information, and very often the only source, in the Balkans, Governments did everything within their power to maintain control over it. International organizations, Governments and non-governmental organizations should therefore strongly oppose the new laws on information, universities and non-governmental organizations adopted by Yugoslavia, for the development of free and pluralistic media was a prerequisite for overcoming ethnic division and achieving reconciliation and the promotion of human rights. Following his meeting with editors of independent news media in Belgrade, he had proposed the development of close cooperation between the OSCE mission and the independent radio networks and, if necessary, the establishment of an independent multi-ethnic television station. A dialogue must be opened between the Albanian, Serbian and other communities, which were currently totally separated from one another, if the efforts undertaken were to bear fruit. In order to bring about real improvements in the human rights situation in the whole region, it was necessary to adopt a positive strategy aimed at gradually opening up all those societies, rather than resorting to partial measures or economic sanctions resulting in the weakening of the forces of democracy and the emerging civil society, which provided the only guarantees for the promotion and respect of human rights.

11. **Mr. Strohal** (Austria) requested additional information regarding the activities undertaken by local non-governmental organizations to facilitate the return of refugees. Referring to the human rights protection mechanisms established in Bosnia and Herzegovina by the Dayton Agreement, which were mentioned in the report (A/53/322), he asked whether the Special Rapporteur had been able to examine any of the large number of cases submitted to those bodies and whether he was aware of the ways in which the competent authorities were implementing the decisions of those bodies. With respect to the media, he asked whether the Special Rapporteur had been able to raise with the Croatian authorities the situation of several independent journalists who were respondents in a large number of court cases brought by members of the Government and their associates. Regarding the Federal Republic of Yugoslavia, the European Union welcomed the agreement between the Government and the High Commissioner for Human Rights concerning the status of the Belgrade office, which should allow for the deployment of additional observers, particularly in Kosovo. He asked whether the situation on the ground had improved since then and what measures the international community could take to ensure that the assurances given by the various political leaders concerning their commitment to apply international human rights norms were translated into reality.

12. **Mr. Socanec** (Croatia) said that there were three points in the report (A/53/322) which concerned him. First, Croatia had been cooperating with the Special Rapporteur since the establishment of that post in 1992 and Croatia's public bodies had been working with the mission of the Office of the High Commissioner for Human Rights since 1994. His delegation was therefore surprised that the Special Rapporteur referred in his report only to cooperation with the Federal Republic of Yugoslavia and neglected to mention cooperation on the part of Croatia and Bosnia and Herzegovina. Second, his delegation sought clarification with respect to the comments made in paragraph 105 of the report concerning the deterioration of the human rights situation in all three countries, which conflicted with the

views expressed by other international bodies, notably OSCE and the Council of Europe, which had noted the steady improvement in the situation in Croatia, and also in Bosnia and Herzegovina, despite the difficulties encountered in that country. Finally, his Government had proposed that the reports of the Special Rapporteur should be transmitted to it in draft form to allow for consultations before the completion of the final version. His delegation hoped that that proposal would be taken into account in the future. It would present its comments on the Special Rapporteur's current report after receiving instructions from the relevant ministry.

13. **Mr. Kondi** (Albania) said that his Government welcomed initiatives taken by the international community on behalf of human rights and the mission undertaken by the Special Rapporteur. The report of the Special Rapporteur on the situation of human rights in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) (A/53/322) prompted a number of comments, particularly because it gave an impression of normality that did not correspond to reality. As had been denounced in a number of General Assembly resolutions, the fact was that ethnic Albanians had for a long time been deprived of their most basic rights. The situation had deteriorated seriously in 1998, with the military operations launched by the Serbian authorities, which, according to United Nations sources, had led to the displacement of more than 300,000 people, numerous massacres and the deliberate destruction of houses. The Special Rapporteur passed over in silence the exactions of the Serbian army and police against Albanian civilians, limiting himself to dealing in allegations and leaving the impression of having consulted only government sources. Contrary to what the Special Rapporteur said, it was not a matter of simple confrontations between government forces and groups of the Kosovo Liberation Army, but of a policy of ethnic cleansing which denied ethnic Albanians the most fundamental right, the right to life.

14. **The Chairman** reminded the representative of Albania that at the current stage he should restrict himself to asking questions, and that the general debate would take place later.

15. **Mr. Arda** (Turkey) said it was regrettable that the addendum to the report of the Special Rapporteur had not yet been circulated; he wondered if it would be possible to use an unofficial version of it. He also considered that with the recent elections in Bosnia and Herzegovina the situation of human rights had improved in that country. Finally, he said he wanted more information on Kosovo.

16. **Mr. Carle** (United States of America) noted that the Special Rapporteur had reported orally on the problems that were common to the region as a whole. In particular, he had clearly underlined the inherent difficulties in the imposition of sanctions, which unfortunately, when one was dealing with certain individuals, were the only method of achieving results. The written report also emphasized the most striking aspects of the human rights violations, especially in Kosovo.

17. It would be interesting to know whether the Special Rapporteur had been able to establish close working relations with non-governmental organizations and the independent press. It was essential to secure information from sources that were as varied as possible and to do that, to guarantee the freedom of the press, the favoured means of finding out the truth and of getting an objective idea of the events and problems in the human rights area currently being experienced by the Federal Republic of Yugoslavia. It would also be good if the Special Rapporteur were to suggest measures the United Nations system and the international community could take to facilitate the establishment of free media in that country. It would also be judicious to provide details on the policy of bombing, destruction and intimidation of the Albanian population of Kosovo.

18. **Mr. Rogov** (Russian Federation) said he wanted to know the extent to which the report of the Special Rapporteur had to be taken into account by the Third Committee and the Commission on Human Rights in their work, and which parts of it should be reflected in draft resolutions, which was also an interesting question from the point of view of strengthening the institution of Special Rapporteurs, currently the subject of an in-depth study on the part of the Commission on Human Rights.

19. **Mr. Dienstbier** (Special Rapporteur of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia), replying to the representatives of Turkey and Albania, said it was most regrettable that the addendum to his report had not been circulated as planned because it contained much information on Kosovo and on the elections in Bosnia and Herzegovina; he hoped that a preliminary version could be made available to delegations as soon as possible. He was convinced that in Kosovo it was not a question of ethnic cleansing but a problem of democracy that was likely to result in ethnic conflicts and hatreds. He had continually condemned the use of force by the Yugoslav forces, and considered that the key objective now was to prevent a repetition of the events that had taken place in Kosovo and Bosnia and Herzegovina.

20. Replying to the representative of Croatia, he pointed out that he had only taken up his duties in July and

consequently had not had time to engage in discussions with the Governments concerned, but he had been able to study the situation with their representatives. He declared himself ready to hold a dialogue with all interested parties. Replying to the representative of Austria, he also noted that a memorandum of understanding had been negotiated, and that it was planned to open an office in Kosovo and to cooperate closely with the mission of the Organization for Security and Cooperation in Europe. As to the mediators of the Federation, it was extremely disappointing that their recommendations were not respected and that the political parties were criticizing them.

21. Replying to the representative of the United States, he said that economic sanctions punished populations and not leaders, and that in addition they enabled nationalist and fundamentalist regimes to manipulate people; far from improving the situation they were the source of tensions. Authoritarian regimes often preferred to be isolated. Only close cooperation between Governments, the media and non-governmental organizations could contribute to improving the human rights situation; for his part, the Special Rapporteur made the most of the assistance he received from non-governmental organizations. The question of bombings in Kosovo was dealt with in the addendum to his report.

22. Replying to the representative of the Russian Federation, he said that the situation in Kosovo in the spring should be monitored closely, and special attention given to refugees and to ensuring the preservation of press freedom.

23. **Mr. Moussali** (Special Representative on Rwanda of the Commission on Human Rights) began by stating that his mandate did not include conducting inquiries; his role was to formulate recommendations on ways of improving the human rights situation and facilitating the establishment of an independent and effective national human rights commission. A number of related events had recently taken place in Rwanda.

24. The mission of the Office of the United Nations High Commissioner for Human Rights had left the country because of a lack of agreement between the Rwandan Government, which wanted it to devote its efforts to technical cooperation, training and the strengthening of national capacities in the field of human rights and to terminate its monitoring activities, and the High Commissioner who had the same intentions but did not want to bring the monitoring activities to an end until it was certain that they would be taken up by a national institution. The departure of the mission had been regretted by the entire society, and it was to be hoped that a new arrangement could be reached.

25. In that context it was becoming more urgent than ever for the national human rights commission envisaged by the country's fundamental law and established by presidential decree in November 1997 finally to be able to begin its work. The highest officials in the country were determined to establish the commission and to ensure its independence so that it could examine human rights violations committed in Rwanda by government agencies, individuals acting under cover of the State or national or international organizations operating in Rwanda, and had explained that setting it up had taken a long time owing to the process of selecting its members, but that that process was now coming to an end. When the commission was set up, a public round table could be organized with the participation of members of the National Assembly, representatives of civil society and regional and international experts, which would enable its methods of operation and the resources it needed to be determined. A number of donor countries and organizations, including the Office of the United Nations High Commissioner for Human Rights, were ready to provide financial and technical support both for the organization of the round table and for the commission itself.

26. The 1994 genocide and the collapse of the justice system continued to have grave consequences for the administration of justice and prison conditions which were often characterized by high rates of morbidity and mortality. However, thanks to the assistance provided by the international community and the unceasing efforts of the Government, the situation was beginning to improve. The justice system was being restructured and the number of persons under arrest or in detention was on the decline. The international community should make every effort to support the Government in its attempt to improve both the prison system and the civil and military justice systems.

27. Despite the decline in the number of attacks carried out by armed groups consisting mainly of Interahamwe extremists and members of the former Rwandan army, security conditions in the country continued to give cause for concern. Both those attacks, which aimed at perpetuating fear and at undermining government efforts to rebuild the country and reunite the various sectors of the population, and counter-attacks by government forces had forced tens of thousands of families to abandon their homes, adding a problem of displaced persons to that of the almost three million refugees seeking repatriation. Although the Rwandan Government was working to reintegrate returnees, with the invaluable support and assistance of the United Nations system and non-governmental organizations, those attacks must cease, since they impeded the dissemination of a national human rights culture and only exacerbated the

problems arising from the situation in the neighbouring Democratic Republic of the Congo. The international community should take action to support regional initiatives aimed at re-establishing peace and security and respect for human rights. Only a long-term regional solution restoring confidence and security would bring a halt to the current conflict.

28. **Mr. Strohal** (Austria) remarked that the Special Representative's mandate was of special importance, particularly following the withdrawal of the Field Operation of the Office of the High Commissioner for Human Rights. He wondered what effect the withdrawal of the Operation had on the situation on the ground. He also wanted to know whether effective progress was being made in the establishment of the National Human Rights Commission and what impact the round table would have. He also wanted to know how many minors were being held in detention, since some reports suggested that the number was growing, and to receive more information about their prison conditions. He said that more should be done to provide care for children who had lost their families during the genocide. Finally, he wanted to know the Special Representative's opinion concerning the training programme for judges and judicial services personnel and the pressure on the Public Prosector's Offices (parquets) resulting from the increased caseload caused by the introduction of new procedures.

29. **Mr. Kayinamura** (Rwanda) stressed that in paragraph 18 of his report on the human rights situation in Rwanda, (A/53/402), the Special Representative had clearly defined the human rights objectives of the Rwandan Government. The latter would seek to ensure that the Committee elaborated a draft resolution calling for the international community's support in realizing those objectives. He wanted to know why paragraph 32 of the Special Representative's report contained two apparently contradictory sentences concerning the culpability of the Rwandan Patriotic Army in the death of unarmed civilians and concerning the penalties imposed to prevent the recurrence of such violations. Finally, he pointed out that the return of millions of people to Rwanda marked a victory and that the Special Representative could be assured of Rwanda's cooperation.

30. **Ms. Chomiak-Salvi** (United States of America) said that she would like to know whether international organizations had unimpeded access to prisoners.

31. **Mr. Mousalli** (Special Representative on Rwanda of the Commission on Human Rights), responding to the representative of Austria, said that the people and Government of Rwanda regretted the departure of the Field Operation, which had grave consequences for the implementation of certain programmes relating to justice and field operations. Moreover, he had been deprived of a valuable source of information. He hoped that a new formula could be found, and noted that the United Nations system and the Rwandan Government were working to that end. The Government was determined that the National Human Rights Commission, which had been established by Presidential Decree, would receive the support of all sectors of society. That was why the forthcoming round table was so important. Its purpose was to enhance support for the Commission and to increase its resources and powers. While the situation of minors being held in detention was a matter for concern, it was improving slightly; local non-governmental organizations should work together with the international community to improve their circumstances.

32. In response to the representative of Rwanda, he said that he could see no contradiction in paragraph 32 of his report (A/53/402). Members of the armed forces did not carry out violations under orders from their superiors, and, as that paragraph indicated, the Rwandan military ensured that such violations were punished.

33. Finally, in response to the question from the representative of the United States of America, he said that he believed that it was vital that non-governmental organizations should have unimpeded access to prisoners and maintain continuing contact with the National Human Rights Commission. There had been problems in certain cases.

34. **Mr. Rodley** (Special Representative of the Commission on Human Rights on Torture) said that the presentation of a status report on the overall trends and developments with regard to his mandate was a daunting task.

35. Information received from reliable sources and transmitted to Governments concerning cases of torture and similar cruel, inhuman or degrading treatment or punishment involved between sixty and eighty countries per year. While they were not always the same countries, torture was common in half that number. Methods ranged from physical brutality to more refined techniques or psychological torture. While it had not been possible to undertake a thorough review of the accumulated data, his intuitive assessment was that there had been no general shift from the use of physical to psychological torture, although that might have been the case in some countries. Victims of torture could be anyone whom law enforcement agents suspected as being in possession of useful information or of being a criminal or of belonging to a group whose illegal or prohibited activities

they wanted to stop. The victims could be political activists, trade unionists, journalists, lawyers, doctors, human rights advocates, suspected terrorists or even children. Increasingly, reports suggested that victims of torture were no longer only persons with perceived or real political affiliations as in the past, but also persons actually or believed to be involved in ordinary criminal activity. Nowadays, they might also be foreigners or other minority group members.

36. Torture was a crime in most, if not all, national legal systems, as well as under international law. It was particularly serious, because it was inflicted by the very persons charged with upholding the law. Its continuation was the result of impunity, as the Vienna Declaration and Programme of Action of the 1993 World Conference on Human Rights had stressed. Several factors contributed to the practice of torture with impunity. Prolonged periods of detention incommunicado, for example, left detainees at the mercy of their jailers. Moreover, prosecutors and judges were reluctant to believe allegations of torture made by members of marginalized or feared groups and often yielded to the expectations of Governments or the general public. The existence of special legal norms, procedures and fora for cases involving State security forces further abetted impunity. The perpetrators of torture evaded the ordinary courts and, in effect, were often protected by the military justice system, a phenomenon that, fortunately, appeared to be on the wane. In addition to causes of a de facto nature, there were also causes of a *de jure* nature. For example, a State might adopt measures aimed at ensuring that perpetrators of torture were immune from legal liability. Such measures could include an unrealistically short period for the statute of limitation or the granting of a general amnesty.

37. The elimination of the scourge of torture, anticipated since the mission of the Special Rapporteur was defined in 1985, could not become a reality unless the obstacle of impunity was removed. Among the many recommendations made by the Special Rapporteur for eradicating the practice of torture, three stand out: at the national level, States should not tolerate solitary confinement for long periods of more than 24 to 48 hours; at the international level, all States should ratify the Statute of the International Criminal Court as soon as possible so that those responsible for acts of torture in cases of genocide, crimes against humanity and war crimes, could be brought to justice; at the transnational level, all States should endeavour to adopt legislation enabling them to prosecute the perpetrators of crimes against human rights, including torture, genocide, crimes against humanity and war crimes.

38. **Mr. Strohal** (Austria) thanked the Special Rapporteur for his report, noting that it painted a rather bleak picture of the situation. The member states of the European Union were concerned that only a small number of countries had ratified the Convention against Torture and he would welcome suggestions for measures to remedy that situation. The Special Rapporteur might indicate the content of the replies of Governments to the communications he sends them. In addition, it would be useful to hear the opinion of the Special Rapporteur with regard to contacts which might be established in the context of the ratification of the Statute of the International Criminal Court, between the Commission on Human Rights and the Special Rapporteur and how contacts between the Special Rapporteur, the Committee against Torture and the Commission on Human Rights might be reinforced in order to fill in existing gaps in national legislation governing the criminalization of torture.

39. **Ms. Chomiak-Salvi** (United States of America), referring to the rehabilitation centres created in various countries to assist the victims of torture, wanted to know the Special Rapporteur's opinion on their operations and how much support they gave his mission.

40. **Mr. Fernandez-Palacios** (Cuba) asked for more information on the situation of minorities, including migrants and foreign nationals, tortured and detained in certain countries and what steps were being taken to assist them.

41. **Mrs. Geelan** (Denmark) asked what the General Assembly could do towards the prevention of torture and what initiatives the Special Rapporteur was planning to take. Perhaps a mechanism should be created for the evaluation of the work done on that question by successive Special Rapporteurs since 1985.

42. **Mr. Rodney** (Special Rapporteur on Torture), replying to those questions, observed that 107 countries, a fairly small number, had ratified the Convention against Torture. Ratification of that instrument had been expected to be virtually universal. There might be a technical reason for the shortfall. Implementation of articles 4, 5, 6, 7 and 8 required that countries adopt legislative and follow-up measures to ensure that anyone who had committed acts of torture would be prosecuted or extradited. While the Committee against Torture could certainly encourage countries which had not yet ratified the Convention to do so and could provide them with technical assistance to that end, it must have sufficient resources for that purpose.

43. Governments were increasingly responsive to communications from the Special Rapporteur, particularly with regard to alleged acts of torture committed in their

territory. Some responded more readily to urgent appeals issued by Ministries of Foreign Affairs, and others reacted to charges supported with evidence provided by the missions of Member States at Geneva. Some replies were complete with regard to the substance of his communication whereas others refused to recognize any obligation to investigate. Replies needed to be more detailed and should indicate what measures had been taken, particularly to compensate the victims of torture.

44. The Special Rapporteur, the Office of the High Commissioner for Human Rights and the United Nations Voluntary Fund for Victims of Torture were working together to help countries fill existing gaps in their national legislation.

45. With a view to accelerating the process of ratification of the Statute of the International Criminal Court, the Office of the High Commissioner for Human Rights could provide advisory services to Member States.

46. The General Assembly could encourage States to authorize prison inspections and to allow prisoners to have contact with the outside. The General Assembly should also urge States to include in their legislation the international norms prohibiting torture. With respect to follow-up to the Special Rapporteur's recommendations, a body charged with that task could not be set up for want of the necessary resources. Accordingly, the reports contained little information on that follow up.

47. Although he did not want to deal with the problem of minorities, including migrants, the Special Rapporteur agreed that minorities were treated with much less respect and that the situation should be remedied.

48. The United Nations Voluntary Fund for Victims of Torture had helped to establish 200 rehabilitation centres throughout the world and to train their personnel. Those centres helped to relieve the suffering of individuals and the information they supplied supported the fight against torture. The Special Rapporteur expressed gratification at the adoption by the Congress of the United States of a bill calling for an increase in the United States contribution to the Fund and appealed to Member States to follow that example.

49. **Mr. Ndiaye** (Director, New York Office of the High Commissioner for Human Rights), speaking on behalf of the Special Rapporteur on the situation of human rights in Burundi, Mr. Paulo Sergio Pinheiro, who was recovering from an automobile accident that occurred during his stay in Burundi in August. He introduced the third interim report (A/53/490), covering the period 1 May to 15 September 1998, submitted by the Special Rapporteur to the General Assembly in accordance with resolution 1998/82 of the Commission on Human Rights. He described Mr. Pinheiro's impressions during his 21 August–4 September 1998 visit to several provinces in Burundi including Karuzi, Kayanza and Muramvya, where the situation had steadily improved, as well as Cibitoke, Bubanza Bujumbura Rural, Bururi and Makamba, which remained unstable.

50. Burundi, after five years of war, had the largest number of internally displaced persons and regrouped populations of any country in the Great Lakes region. Over 500,000 people were currently living in refugee camps or other precarious shelters, most of them in the provinces of Cibitoke, Bubanza, Bujumbura Rural, Bururi and Makamba. The general trend, noticeable to varying degrees in the provinces visited, was the gradual dismantling of the larger camps for the displaced and regrouped and the creation of smaller, decentralized sites, located near military outposts and inhabited by people from the neighbouring hills. The crisis and the war had seriously affected all the indicators of poverty, such as child mortality, primary school attendance and vaccination coverage. In addition, they had had a marked defect on the educational system, since more than one third of Burundi's schools had been damaged or destroyed. They had also gravely affected Burundi women, most of whom were living in the camps for displaced persons and regrouped populations and who were often forced to assume the role of head of household. Despite the commendable efforts made by the countries in the region to review the sanctions imposed on Burundi, the embargo continued to have negative effects on the living conditions of women and children.

51. He said that he would like to draw the attention of the General Assembly to a number of allegations of human rights violations that he had received during the period under consideration, particularly with respect to the right to life and physical integrity, arrests and arbitrary detentions and torture or cruel, inhuman or degrading treatment. During his visit to Burundi, he had observed a definite deterioration in detention conditions as a result of prison overcrowding and the inadequate financial and human resources allocated by the Burundi authorities. He had also learned that there were other detention centres, known as *cachots* (dungeons), located in police precincts and brigade barracks, which were connected to the offices of municipal and regional public prosecutors and administrative authorities. He had received complaints of ill-treatment and torture in detention centres. He was also very much concerned with the conditions of detention of some 250 detainees under sentence of death in the central prison of Bujumbura. The prisoners were kept

together in two cells under inhumane conditions, with no possibility of leaving their cells at any time.

52. He had learned that during the night of 27 to 28 October, some 34 civilians had been killed and 25 others wounded in the town of Kanyosha, south of Bujumbura. The identity of the perpetrators and the causes of the tragic incident were still unknown. Once again he drew the attention of the Burundi authorities to the urgent need to ensure the observance of international standards of humanitarian law and human rights, which prohibited indiscriminate attacks against the civilian population and civilian targets during military operations. He reiterated that it was essential for rebel groups to enforce the principles of international humanitarian law and, in particular, common article 3 of the 1949 Geneva Conventions. He drew their attention to the provisions relating to the physical security of the civilian population, non-combatants and prisoners.

53. Despite all those difficulties, it was fair to acknowledge the significant efforts made by the Burundi authorities to ensure the success of the peace negotiations in Arusha, despite the ongoing civil war. Furthermore, the recent initiatives seeking to implement power-sharing among the Government, the political parties, the National Assembly and civil society had served to reduce the antagonisms which still divided the various parties to the conflict, enhanced the building of a minimum of trust among them and strengthened the internal peace process. The power-sharing, should be regarded as a provisional arrangement in a transition leading to democracy, and to the establishment of a favourable climate for the holding of the Arusha meeting in mid-October 1998.

54. He paid a tribute to the Ministry for Human Rights, Institutional Reform and Relations with the National Assembly for its efforts to promote human rights with the participation of civil society. The international community should provide the Ministry with appropriate assistance in order to strengthen the country's national human rights efforts, including the activities of the Centre for the Promotion of Human Rights and Prevention of Genocide.

55. Drawing upon his experience, he recommended that the United Nations should once again consider the establishment of an international criminal court to address collective fears and haunting memories of genocide by acknowledging past atrocities and stressing the individual responsibility of the perpetrators, in particular, the individual responsibility of those found guilty of genocide, massacres and genocidal acts. He concluded by urging the international community to give top priority to a genuine ceasefire; otherwise it would be difficult to protect the human rights of the civilian population of Burundi, and, in particular, those of its most vulnerable groups.

56. **The Chairman** thanked the Special Rapporteurs for their reports and opened a general discussion of the questions involved.

57. **Mr. Simonovic** (Croatia) said that since the 1993 World Conference on Human Rights, there had been an ever-growing awareness that the promotion and protection of human rights were a legitimate concern of the international community, with the result that more and more States were accepting various forms of human rights assistance and monitoring. The international community had created an international criminal court, and regional mechanisms for the promotion and protection of human rights, such as the recently established European Court of Human Rights, were gaining strength and would contribute to the more effective implementation of the European Convention on Human Rights.

58. Despite that substantial progress, some serious obstacles still persisted. Some States refused to allow the international community to assess the human rights situation in their territory on the pretext of protecting national sovereignty or preserving certain traditional practices. The international community itself was complicating matters by applying double standards to the evaluation of human rights in response to pressure from countries seeking only to advance their own political interests.

59. Since its independence, Croatia had always been open to all forms of cooperation with the United Nations and various regional organizations and its representatives were helping to resolve issues closely linked with the maintenance of peace and stability in the area. For example, after the termination of the mandate of the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium, Croatia had continued to cooperate closely with the United Nations Police Support Group and since the termination of the Group's mandate on 15 October 1998, it had been cooperating with a mission from the Organization for Security and Cooperation in Europe (OSCE) whose function was to help to preserve security and rebuild confidence.

60. With respect to economic and social matters, Croatia was currently implementing a repatriation programme for refugees and displaced persons, and also a reconciliation programme. However, as noted in the Final Report of the Secretary-General on the United Nations Police Support Group (S/1998/1004), economic revitalization and reconstruction in war zones were essential if refugees and displaced persons were to be willing to return there.

Accordingly, the Government had recently adopted a reconstruction programme and was planning to convene a conference on reconstruction and development in early December that should significantly contribute to the normalization of daily life in the war-affected areas.

61. After the aggression waged against it and the period of peace-building that followed, Croatia was now focusing on strengthening democratic processes, including the rule of law, and monitoring observance of economic, social and cultural rights as well as civil and political rights. Since independence, it had become a party to many international instruments, including the six core United Nations human rights treaties, and had ratified the European Convention on Human Rights, thereby greatly strengthening the legal protection enjoyed by its citizens, who could now appeal from domestic court rulings to the European Court of Human Rights. Clearly, then, it was prepared fully to accept international standards in the field of human rights.

62. Since 1992, three Rapporteurs had investigated the human rights situation in Bosnia and Herzegovina, Croatia and Yugoslavia, and a number of reports had been issued. However, the Government of Croatia had never received an evaluation report reviewing the cooperation of the three countries concerned and the implementation of the Special Rapporteurs' recommendations.

63. His Government was fully aware that the task of the Special Rapporteur was not an easy one, requiring as it did the incorporation into a single report of an assessment of the human rights situation in three separate countries. The report he had submitted indicated that the human rights situation had deteriorated in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia. In the case of the first two countries, however, that finding contradicted those contained in other reports, including a recent report of the Secretary-General on Eastern Slavonia. His Government supported the Special Rapporteur's view that the presence of the international community in Croatia would continue to be helpful in the foreseeable future, but wondered in what form that presence should be manifested. Monitoring by the Special Rapporteur was clearly no longer called for and should be replaced by a mandate redirected towards technical assistance and cooperation. While not denying the need for improvement in human rights protection in Croatia, in which endeavour his country sought the partnership of the international community, he believed that the changes which had taken place demanded more appropriate methods of international involvement. His Government therefore warmly welcomed the recent decision of the Office of the United Nations High Commissioner for Human Rights to earmark a technical cooperation project for Croatia that should promote reconciliation and respect for the rule of law, as well as lead to greater public awareness of human rights.

64. In some parts of the world, regional protection mechanisms had served to accelerate the promotion of human rights. A large battle still lay ahead, however, if the rights defined at Vienna were to become reality. At both the national and international levels, it was essential that Governments and non-governmental organizations alike should fight for democracy and the elimination of poverty and social exclusion as matters of priority. They should also focus on guaranteeing other emerging rights of cardinal importance for future generations like environmental protection.

65. **Mr. Mahugu** (Kenya) said that the Universal Declaration of Human Rights recognized the centrality of the rule of law to the enjoyment of human rights. Fifty years later, the observance of that cardinal rule still remained a vital and effective vehicle for the realization of all human rights, be they civil, cultural, economic, political or social.

66. Kenya had accordingly embarked on the implementation of wide-ranging measures aimed at strengthening the rule of law and thereby securing the enjoyment of all human rights. For instance, detention without trial under the Preservation of Public Security Act, which had long been the subject of acrimonious debate within Kenya and a matter of great concern to the international community, had been abolished. Furthermore, the requirement to obtain a licence for public meetings and processions had been eliminated, the only remaining obligation being to provide the police with a simple notification before the event in question. The offence of vagrancy, which essentially criminalized poverty and restricted the freedom of movement of people without lawful gainful employment, had also been voided.

67. The recent enactment of a law creating a constitutional review commission had paved the way for a comprehensive review of Kenya's Constitution. The commission was to consider and recommend improvements to existing constitutional offices, as well as establish new ones, the aim being to strengthen the rule of law and respect for human rights, the prerequisites for social, political, economic and cultural development. It would also make recommendations on Kenya's treaty implementation powers and any other matters relating to compliance with the obligations it had assumed under international instruments. Further, after many unsuccessful attempts, a recent parliamentary session had finally passed a motion establishing the office of ombudsman.

68. Strengthening the rule of law would be effective only if accompanied by human rights education, in particular for members of the parliament, the judiciary, the police and the prison service. In that connection, he commended the Office of the United Nations High Commissioner for Human Rights for the advisory services and the technical, financial and other assistance that it was providing to Kenya through its technical cooperation programme. He also paid a tribute to the High Commissioner for placing assistance in support of the rule of law at the top of the agenda during her discussions with United Nations bodies on the programme of work of her office. He welcomed the process of mainstreaming human rights in all the activities of the United Nations system, and urged that more financial, material and human resources should be made available to enable the High Commissioner to carry out her mandate effectively. In addition, he reiterated his call for increased contributions to the United Nations Voluntary Fund for Technical Cooperation in the Field of Human Rights with a view to enhancing the capacity of the Office of the High Commissioner for Human Rights to provide the necessary high quality assistance.

69. As the Organization prepared to celebrate the fiftieth anniversary of the Universal Declaration of Human Rights, it was essential to foster the spirit of dialogue and cooperation in order to promote and protect human rights at all levels. In that regard, he urged States to be circumspect concerning the use of human rights as unilateral coercive measures, which was inconsistent with General Assembly resolution 52/120 of 12 December 1997 and did not encourage the implementation of human rights instruments in the Member States concerned.

70. **Mr. Chowdhury** (Bangladesh) remarked that the global problem of poverty constituted the biggest threat to the effective enjoyment of human rights and had numerous social implications. The first United Nations Decade for the Eradication of Poverty, which began in 1997, should motivate the international community to redouble its efforts to realize the Decade's objectives. Given that the number of people living in poverty had actually increased in the first year of the Decade, realization of the right to development assumed added urgency. That right should be perceived not only in terms of growth, but also in terms of poverty eradication through empowerment of the people. In that connection, the granting of microcredits had proved to be an effective vehicle. The international community was increasingly recognizing the importance of the right to development and the independent expert to be appointed by the Commission on Human Rights would be submitting studies on the status of the implementation of the Declaration on the Right to Development that would facilitate the deliberations of the Working Group on the Right to Development. Wider dissemination of the Declaration was also absolutely essential, as was mainstreaming of the right to development in all bilateral and multilateral cooperation programmes. The Office of the High Commissioner for Human Rights should provide the necessary staff, services and resources for the programmatic follow up on the implementation of the Declaration. The holding of regional seminars on those questions would also be useful.

71. Like other rights, implementation of the right to development would be greatly enhanced once it was codified in an international instrument. Consequently, he believed that the time had come to give consideration to the elaboration of a convention on the right to development. As stated in the report of the United Nations High Commissioner for Human Rights (A/53/36), the right to development was a priority of the Office of the High Commissioner and it had a very important role to play through advocacy in the promotion and protection of the right to development. All other relevant United Nations bodies and agencies should contribute to that end, for only then would the United Nations have a role as the "voice of the voiceless".

72. The workload of the Office of the High Commissioner for Human Rights had increased and its resources remained meagre. It was no longer acceptable that less than 2 per cent of United Nations resources should be allocated to human rights. The Office of the High Commissioner should have sufficient resources to enable it to carry out its mandate effectively.

*The meeting rose at 1.25 p.m.*